

Exhibit C



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Transcript of Lamar Horton

Date: February 21, 2018

Case: UMG -v- Grande

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Transcript of Lamar Horton
Conducted on February 21, 2018

1 (1 to 4)

1	IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION - - - - - x 5 UMG RECORDINGS, INC., : et al., : Plaintiffs, : vs. : Civil Action No. 8 GRANDE COMMUNICATIONS : 1:17-cv-00365-LY 9 NETWORKS LLC and : PATRIOT MEDIA : 10 CONSULTING, LLC, : Defendants. : 11 - - - - - x 13 14 Deposition of LAMAR HORTON 15 Austin, Texas 16 Wednesday, February 21, 2018 17 10:06 a.m. 18 19 20 21 22 23 Job No.: 178593 24 Pages: 1 - 303 25 Reported By: Candice Andino, TX CSR No. 9332, RMR	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	3
1	Deposition of LAMAR HORTON, held at the offices of: 5 KELLY HART & HALLMAN LLP 6 303 Colorado Street, Suite 2000 7 Austin, Texas 78701 8 (512) 495-6400 13 Pursuant to notice, before Candice Andino, 14 Certified Shorthand Reporter in and for the State of 15 Texas. 16 17 18 19 20 21 22 23 24 25	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	4

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4 (13 to 16)

	13		15
1	Q. Is that fair?	1	A. No.
2	A. Yes.	2	Q. Okay. I'm going to presume, if you answer my
3	Q. We will promptly --	3	question, that you understood it.
4	A. I will say I'm starting to lose my voice, so I	4	Is that fair?
5	may have to repeat myself a few times if it's not --	5	A. Yes.
6	Q. No problem.	6	Q. So if any of the questions I ask you, you don't
7	A. -- clear. Just let me know.	7	understand or you'd like me to clarify, please do so.
8	Q. Yeah, no problem. And I'm sure the	8	A. Okay.
9	videographer and the court reporter will let us know if	9	Q. And, otherwise, I'll presume you understood it
10	we need to speak up or slow down.	10	10 and that your answer was based on my question.
11	A. Okay.	11	A. Okay.
12	Q. I'm occasionally --	12	Q. What is your current occupation and job title?
13	A. Sure.	13	A. Vice president of network engineering and
14	Q. -- told to slow down. And, by "occasionally,"	14	operations.
15	I mean every time. And we will, inevitably, talk over	15	Q. For who?
16	each other and interrupt each other, but let's try our	16	A. Grande Communications.
17	best to go one at a time.	17	Q. How long have you had that position?
18	A. Uh-huh.	18	A. That title? Since 2009.
19	Q. Great. And give yes-or-no answers or -- or	19	Q. So you're distinguishing between the title and
20	verbal answers.	20	20 the position. So the position's remained the same, but
21	I think you stated, at the beginning, your	21	21 the title changed over time?
22	name was put on the record. But just to be clear, could	22	A. My roles and responsibilities have changed in
23	you state your full name for the record.	23	the company since I've been employed.
24	A. Lamar Horton.	24	Q. Okay.
25	Q. No middle name?	25	A. I've been the vice president -- in the position
	14		16
1	A. Alexander. Lamar Alexander Horton.	1	of vice president since 2009.
2	Q. And what's your residence?	2	Q. So, since 2009, you've been the VP for network
3	A. 249 Hamburg Avenue, New Braunfels, Texas.	3	engineering and operations?
4	Q. How far is New Braunfels from Austin?	4	A. Uh-huh.
5	A. From Austin? About 45 minutes.	5	Q. That's a "yes"?
6	Q. So you're local?	6	A. Yes.
7	A. Yes.	7	Q. And then the responsibilities that you had in
8	Q. Okay. A couple other kind of housekeeping	8	8 that role might have changed over time from 2009 to now,
9	matters. If you need to take a break for any reason --	9	9 but the title was the same?
10	you mentioned you losing your voice -- or, you know, if	10	A. Sure. Yes.
11	you're not feeling well or you need to go to the	11	Q. Taking a step back, if you could just start
12	bathroom or something, just let me know and I'll do my	12	12 with your educational background, and then we'll work
13	best to accommodate if there's a natural time we can	13	13 through the positions you had up until today.
14	take a break.	14	A. Sure.
15	A. Okay.	15	Q. So you -- tell me: Did you go to high school
16	Q. I don't mean to probe, so without giving any	16	16 around here?
17	details, I presume you're not on any medication or	17	A. I went to high school in San Antonio, right
18	anything that would impact your ability to recall or --	18	outside of San Antonio.
19	19 or to testify fully today?	19	Q. Okay.
20	A. No.	20	A. Graduated 1993.
21	Q. "No" meaning "yes," you are not on such?	21	Q. After high school, what did you do?
22	A. I am not.	22	A. I went to college at Texas State University for
23	Q. Right. So is there any reason why you can't	23	a couple years and then graduated from DeVry University
24	provide full and complete testimony in response to this	24	in Dallas in '98.
25	25 notice today, that you're aware of?	25	Q. Where is Texas State?

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11 (41 to 44)

1 answer that affirmatively.	41
2 Q. So, sitting here, you're -- you're not aware of 3 times where Grande customer support personnel will reach 4 out to make affirmative contact with a customer about an 5 issue?	1 whomever is running Compass to ensure that they have the 2 most updated information in a way that they can 3 effectively communicate it to the customers?
6 A. Can you define what "affirmative" means in your 7 question.	4 A. Not that I'm aware of, no.
8 Q. Grande calls the customer, not the customer 9 calling Grande.	5 Q. So do you ever provide information to the 6 Compass system and then get questions back, "We don't 7 understand what this means. What do we tell people if 8 they call and ask, you know, X, Y, Z?"
10 A. I can't answer that question. I would be 11 speculating. I would be guessing if I answered that 12 question. I don't know.	9 A. Could you restate the question?
13 Q. In your role as the DMCA agent, what 14 responsibilities do you have over any processes whereby 15 Grande customer service personnel contact customers?	10 Q. Sure.
16 A. In that capacity, I don't have that 17 responsibility.	11 I'm just trying to understand if there is 12 an iterative back-and-forth process between people 13 providing the information that's going into Compass and 14 the people using the Compass information to talk to the 15 customers.
18 Q. Who, other than you, that you're aware of, 19 would have better knowledge about any process underneath 20 Grande's DMCA procedures that would involve a customer 21 service employee reaching out to a customer about a DMCA 22 issue?	16 A. I would -- I would state it as the call center 17 manages the content that's in Compass. That -- that's 18 the call center's system. If they see the need to 19 populate content, they would reach out to us, if it was 20 our area, to say, "Can you help us develop an FAQ for 21 this?" or "Can you give us some information that 22 pertains to that?"
23 MR. HOWENSTINE: Objection. Vague.	23 Q. So when they reach out to you and ask you to 24 help them populate content in Compass, what is the 25 process whereby you provide the content that they asked
24 A. Only the call center management team could 25 explain when we reach out affirmatively to contact a	
42	44
1 customer.	1 you for?
2 Q. (BY MR. O'BEIRNE) Who is the customer service 3 management team?	2 A. I would generalize it as there is no process, 3 no defined process. It could be a phone call. It could 4 be a hallway conversation. It could be an email 5 request. It could be anything.
4 A. That would be Robert Creel and/or his 5 management, Dawn Blydenburgh.	6 Q. So -- I'm just trying to understand. So, as an 7 example, somebody who's -- has responsibility over 8 Compass might see you in the hall and say, 'Hey, we're 9 hearing this abbreviation. We want to have an entry in 10 it in Compass so we can tell customers what it means. 11 What does it mean?"
6 Q. What -- strike that.	12 And, if you know what it means, you might 13 say, "Oh, it means such and such."
7 In your role as the VP of network 8 engineering, do you or your team provide information 9 that is input into the custom -- sorry. I misspoke. 10 Strike that.	14 A. That's a fair example.
11 In your role as the VP of network 12 engineering, do you or people you supervise provide 13 information that is put into the Compass system for use 14 by customer service employees?	15 Q. Or it might be a formal process where they send 16 a written request describing the input that they need 17 for the system and your team assesses it and provides 18 information?
15 A. Generally speaking, yes.	19 A. That could be fair as well.
16 Q. What kinds of information do you provide that 17 is put into Compass for the use of the customer service 18 employees?	20 Q. And it could be anywhere in between?
19 A. Typically, it would be technical information, 20 such as these modems work correctly for these products 21 or, you know, maybe helping develop an FAQ for how to 22 explain something to a customer that's tech -- very 23 technical. Typically, it's product related or product 24 support related.	21 A. Sure. Yes.
25 Q. Is there a process whereby you work with	22 Q. What input have you had into Compass 23 information, including frequently asked questions, about 24 Grande's DMCA policy?
	25 A. I don't recall having any involvement with

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12 (45 to 48)

	45		47
1 that.		1 A. I do not.	
2 Q. So, sitting here today, as the DMCA agent, what		2 Q. Do you review notices sent to Grande -- strike	
3 can you tell me about what is in the Compass system to		3 that.	
4 answer frequently asked questions from customers about		4 Do you review information that Grande	
5 Grande's DMCA policy?		5 receives from the outside world pursuant to the DMCA	
6 A. Can you restate that, please?		6 policy?	
7 Q. Sure.		7 MR. HOWENSTINE: Objection. Vague.	
8 Sitting here today, as the DMCA agent, what		8 A. I agree. I don't understand what you're	
9 can you tell me about the information that is in Compass		9 asking.	
10 to answer frequently asked questions from customers		10 Q. (BY MR. O'BEIRNE) Sure.	
11 about Grande's DMCA policy?		11 So I understood you to testify that you --	
12 A. I don't know what's currently in the system. I		12 your responsibility is to be a point of contact to the	
13 couldn't quantify that. I seem to recall at one time we		13 outside world, for them, to provide information.	
14 had an article that explained to customers -- excuse me.		14 Is that fair?	
15 Let me restate that -- explained to the call center		15 A. Generally speaking, yes.	
16 agent, if a customer receives a letter like this, this		16 Q. Okay. So whatever you meant by get information	
17 is what this means, in a way to explain to the customer		17 from the outside world as a point of contact, I'm asking	
18 and get them to the right team to support that customer.		18 you: What review do you do of information that you	
19 Q. What is your understanding of your		19 receive as the point of contact to the outside world for	
20 responsibilities as the DMCA agent?		20 DMCA purposes?	
21 A. My understanding of being the DMCA agent is		21 A. To the best of my knowledge, I've never	
22 that I am a point of contact for the outside world of		22 received anything directly from an outside entity about	
23 copyright holders to provide notice or a contact to		23 DMCA.	
24 reach out to.		24 Q. Is it your understanding that Grande has	
25 Q. Do you have any -- setting -- strike that.		25 received information about the DMCA but not you	
	46		48
1 Setting aside the role of a point of		1 personally?	
2 contact to receive information, what responsibilities do		2 A. I don't understand that question. What is	
3 you understand you have, as the DMCA agent, to monitor		3 about the DMCA?	
4 or otherwise oversee DMCA procedures internal to Grande?		4 Q. Have you ever received a notice of alleged	
5 A. I don't believe that I have that		5 infringement -- copyright infringement, personally?	
6 responsibility.		6 A. No.	
7 Q. What training did you receive in connection		7 Q. Are you aware that Grande has received notices	
8 with being made the DMCA agent?		8 of alleged copyright infringement in the last year?	
9 A. I did not receive any training.		9 A. Yes.	
10 Q. What description was provided to you as to what		10 Q. And in 2016?	
11 the role would entail?		11 A. Yes.	
12 A. As --		12 Q. 2015?	
13 MR. HOWENSTINE: And I'll jump in and		13 A. Yes.	
14 caution you. To the extent it involves communications		14 Q. What review do you conduct of notices of	
15 with attorneys, inside attorneys, you should not		15 alleged copyright infringement received by Grande in	
16 disclose any of those communications.		16 your role as the DMCA agent?	
17 Q. (BY MR. O'BEIRNE) Let me rephrase the		17 A. Are you asking do I review all notices that	
18 question.		18 come through the system or come into Grande?	
19 Other than any legal advice provided to you		19 Q. My question is: What review do you conduct of	
20 by counsel, what explanation was provided to you, in		20 notices of alleged copyright infringement received by	
21 connection with your being made the DMCA agent, as to		21 Grande in your role as the DMCA agent?	
22 the responsibilities you would have?		22 A. I do not review individual copyright notices.	
23 A. I don't -- nothing.		23 Q. Do you review reports or summaries of notices	
24 Q. Do you attend periodic internal DMCA meetings		24 that have been received?	
25 in your role as the DMCA agent?		25 A. Only upon periods of reviewing the system or a	

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19 (73 to 76)

	73		75
1 red.		1 Underneath "Contact customer by phone," it	
2 Do you see that?		2 states (as read): Determination of contact built on	
3 A. Numbers in red.		3 Excess Violations2 SSRS report.	
4 Q. Yes, sir. Number one --		4 Do you see that?	
5 A. Oh, yes.		5 A. I do.	
6 Q. -- letter or email.		6 Q. An SSRS report is a -- is a document generated	
7 A. Yes. Yes.		7 by Grande's information system; correct?	
8 Q. So the outline proceeds, underneath "Need to		8 A. Yes.	
9 build communication procedure" (as read): Number 1,		9 Q. And this is referring to a report reflecting	
10 letter or email.		10 Grande customers that Grande has evidence have excessive	
11 Do you see that?		11 violations of copyright infringement.	
12 A. Yes.		12 MR. HOWENSTINE: Objection. Vague.	
13 Q. And it states (as read): Current process can		13 Confusing.	
14 be followed, just need to ensure letter has been mailed.		14 A. I can only assume that's accurate, yes.	
15 Do you see that?		15 Q. (BY MR. O'BEIRNE) Okay.	
16 A. Yep.		16 A. But I don't know.	
17 Q. Do you recall discussions about whether or not		17 Q. Well, you just testified you were familiar with	
18 letters were actually not being mailed, even though the		18 the context of this conversation regarding making	
19 system was calling for them to be mailed?		19 sure --	
20 A. That's the wrong context. The context is, as		20 A. I am. The particular report.	
21 it gets to the point of working through a repeat		21 Q. I'm sorry. Let me finish the question.	
22 violation, ensuring that a letter was received by the		22 You testified you were familiar with the	
23 customer so that we are not making any assumptions and		23 context of what it meant to ensure the letter has been	
24 any mistakes because it's leading to a customer		24 mailed; right?	
25 communication.		25 A. Yes.	
	74		76
1 Q. Okay. So you remember what this means?		1 Q. Your understanding is that the excess	
2 A. I -- I -- I know the context of what this is,		2 violations to SSRS report is a report generated by	
3 yes.		3 Grande, containing information about customers that	
4 Q. Okay. How do you know the context of what this		4 Grande has determined have received an excessive amount	
5 is?		5 of copyright infringement notices.	
6 A. Through general discussions.		6 MR. HOWENSTINE: Objection. Vague.	
7 Q. With whom?		7 A. Yes; however, I cannot explain the details of	
8 A. Various Grande employees.		8 that report.	
9 Q. Okay. And your understanding of what that		9 (Exhibit 57 marked.)	
10 means is need to ensure the letter's been mailed. If		10 Q. (BY MR. O'BEIRNE) I'm handing you PX 57.	
11 the company's going to take action on the letter that		11 Do you see this is a binder-clipped	
12 was sent to a customer, you want to make sure the letter		12 printout of an Excel spreadsheet?	
13 went out to the customer?		13 Is that fair?	
14 A. Correct.		14 A. Yes.	
15 Q. Is that because there were times where the		15 Q. I'm certainly not asking you to read this	
16 company went to take action against a customer based on		16 entire document, but I want to ask you some questions	
17 a letter that you thought went out and then the customer		17 about it and first put a couple things in the record.	
18 said, "Hey, I never received that!"		18 You'll turn to the last page and see, if	
19 A. Not to my knowledge, but I -- I believe the		19 you would, please, that the last page is a piece of	
20 intention was to avoid that particular scenario.		20 paper with a Bates number on the bottom, GRANDE0000155.	
21 Q. Number two, underneath "Communication		21 Do you see that?	
22 Procedure" (as read): Contact customer by phone.		22 A. Yes.	
23 Do you see that?		23 Q. And then the text in the middle says (as read):	
24 A. Yes.		24 This document was provided in native format upon	
25 Q. And -- strike that.		25 request.	

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20 (77 to 80)

	77		79
1	A. Yes.	1	therefore, it ended up being a whole second -- section
2	Q. Do you see that?	2	of the document but that that natively appears next to
3	So you can't Bates-stamp an Excel	3	the C column.
4	spreadsheet because it's produced in native format, so a	4	A. Yes.
5	placeholder is given to us with a Bates number to show	5	Q. Okay. So, staying there, you'll agree with me
6	that this was produced by Grande. I represent to you	6	that the last line that has a column A, B, and C, the
7	that that's what occurred in this case. Okay?	7	number of that line is 5,337?
8	A. Okay.	8	A. It is.
9	Q. So this is a printout of the Excel spreadsheet	9	Q. So there appear to be 5,337 entries on this
10	10 that was produced at GRANDE0000155.	10	10 DMCA Excessive ViolationsV2 report.
11	Do you understand?	11	A. It appears to be, yes.
12	A. Yes.	12	Q. If you go back to the first page, the column
13	Q. Now, looking at Exhibit 57 -- Plaintiffs'	13	13 headings are "Account Days" and "Weighted Infringement."
14	14 Exhibit 57 -- I'll start over.	14	Do you see that?
15	Looking at Plaintiffs' Exhibit 57, it says,	15	A. I do.
16	16 at the bottom middle (as read): DMCA Excessive	16	Q. And then, underneath Account, there is a column
17	17 ViolationsV2 from 1/1/2017 to 1/31/2017.	18	18 with numbers, all of which have the same number of
18	Do you see that?	19	19 digits in it.
19	A. I do.	20	Do you see that?
20	Q. This is one of the SSRS Excess Violations2	20	A. Yes.
21	21 report -- reports that was being mentioned in the	21	Q. Do you understand those to be customer account
22	22 touchpoint process outline; right?	22	22 numbers?
23	MR. HOWENSTINE: Objection. Calls for	23	A. I do.
24	24 speculation. I believe he already testified that he	24	Q. And then there's a number of days associated
25	25 wasn't familiar with the details of those reports.	25	25 with each customer account.
	78		80
1	Q. (BY MR. O'BEIRNE) You can go ahead and answer.	1	Do you see that?
2	A. It appears to be.	2	A. I see that column, yes.
3	MR. O'BEIRNE: I'd ask counsel just to put	3	Q. And then the column next to that, Weighted
4	a form objection on and avoid speaking objections.	4	Infringement.
5	Q. (BY MR. O'BEIRNE) You would agree with me	5	A. Uh-huh.
6	that, if you turn to the last Excel page, which is the	6	Q. You -- you see that column there?
7	7 page before the native page, you see there the end of	7	A. I do.
8	8 the Excel spreadsheet columns?	8	Q. What does "weighted infringement" mean?
9	A. I do.	9	A. I don't -- I don't know the answer to that
10	Q. And this document appears to have 5,337 lines	10	10 question. I can generically tell you that this was our
11	11 in it. Hold on. Okay. Let's take a step back.	11	11 attempt at trying to develop a -- a scoring method that
12	Do you see that, on page 1 of Plaintiffs'	12	12 aligned with our management team's executed plan.
13	13 Exhibit 57, there's three columns, A, B, and C?	13	Q. Executed plan to deal with repeat infringers on
14	A. Yes.	14	14 your network?
15	Q. Please turn for me -- it's about halfway	15	A. Correct.
16	16 through the document -- you'll see the end of the line	16	Q. Tracking customers by number and then
17	17 numbers is 5,337, and there's those three full columns,	17	17 associating a weighted infringement score and a number
18	18 A, B, and C, reflected there.	18	18 of days for which they've been tracked in some way?
19	A. Yes.	19	A. Yes, some type of methodology.
20	Q. And then, starting after that, the next page	20	Q. And this is the report from January 1st, 2017,
21	21 has a column D, starting over at 1.	21	21 to January 31st, 2017?
22	Do you see that?	22	A. It appears so.
23	A. Yes.	23	Q. So it's a capability of the SR -- strike that.
24	Q. I'll represent to you, somewhat frustratingly,	24	It's a capability of Grande's system to
25	25 the D column was not printed next to the C columns, and,	25	25 issue reports from the SSRS system for a given month or

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21 (81 to 84)

	81		83
1 other period of time?		1 Do you see that?	
2 MR. HOWENSTINE: Objection. Calls for		2 A. I do.	
3 speculation.		3 Q. And then, when you turn to the next page, this	
4 A. Yes. I don't know how this report was created,		4 is the second sheet in the native Excel that was	
5 so I can't answer that.		5 produced to us, which doesn't bear any description on	
6 Q. (BY MR. O'BEIRNE) At the bottom of the first		6 the bottom.	
7 page, you see the report states it was executed at		7 Do you see that?	
8 3:11 p.m., on April 13, 2017? Do you see that?		8 A. I do.	
9 A. I do.		9 Q. Take my binder clip off there.	
10 Q. And that's the day before the Friday call		10 And you'll see that the count starts	
11 dealing with customers in violation of certain copyright		11 over -- the row count starts over at 1 on this first	
12 rules that we looked at in PX 55; right?		12 page of the second sheet.	
13 A. It would appear so, yes.		13 Do you see that?	
14 Q. And PX 55 references an Excess Violations2 SSRS		14 A. I do.	
15 report; correct?		15 Q. I'm going to talk to you first about the first	
16 A. It does.		16 sheet, so if you could just, you know, put something in	
17 (Exhibit 58 marked.)		17 there to hold the place, and that way we can try to	
18 Q. (BY MR. O'BEIRNE) I'm handing you Plaintiffs'		18 minimize the flipping back and forth that we both have	
19 Exhibit 58. This is also a printout of an Excel		19 to do.	
20 spreadsheet produced in this case, with a Bates number		20 This report also has the column headings	
21 on the last page; correct?		21 "Account Days" and "Weighted Infringement."	
22 A. Yes.		22 Do you see that?	
23 Q. And this is the DMCA Excessive Violations		23 A. I do.	
24 Report from October 1st, 2016, through December 31st,		24 Q. This also -- D has "Status."	
25 2016.		25 Do you see that?	
	82		84
1 A. It would appear so.		1 A. I do.	
2 Q. And it also states it was executed at		2 Q. And then, underneath "Status," there's "Blank	
3 4/13/2017, 2:07 p.m.		3 equals active," "A equals active," and "Star equals	
4 A. It does.		4 unknown."	
5 Q. By "also," I meant the previous exhibit we just		5 Do you see that?	
6 looked at was also executed on that date. I'm not sure		6 A. I do.	
7 it was the exact same time, but this report appears to		7 Q. And I think D on the other one said the same	
8 have been executed on April 13th, 2017; correct?		8 thing. We just didn't look at it.	
9 A. It appears so, yes, sir.		9 And, just like PX 57, PX 58 has Grande	
10 Q. And this is PX 58.		10 customer account numbers underneath column A; right?	
11 MR. MISSNER: Fifty-eight.		11 A. It does.	
12 Q. (BY MR. O'BEIRNE) Now, happily, column D ended		12 Q. With a number of days reflected in	
13 up where it's supposed to be on this sheet.		13 column B; right?	
14 You see that; right?		14 A. Yes.	
15 A. I do.		15 Q. And a weighted infringement assessment in	
16 Q. Turn with me, if you would, please -- actually,		16 column C?	
17 you know what? Bear with me for one second.		17 A. Yes.	
18 So I represent to you PX 58 had two sheets		18 Q. And, if you turn to the last page of this first	
19 in it, a first sheet and a second sheet. And, again,		19 sheet, Grande's tracking 9,014 customers on its DMCA	
20 not being able to -- to have it Bates-stamped or have		20 excessive violations from October 1st, 2016, through	
21 that be reflected in some way, if you turn halfway		21 December 31st, 2016, report; correct?	
22 through, about halfway through the document, until you		22 MR. HOWENSTINE: Objection. Calls for	
23 get to the row number -- rows numbering in the 8,000s,		23 speculation.	
24 you'll see that the pages stop that have "Excessive		24 A. It appears so.	
25 Violations" written at the bottom.		25 Q. (BY MR. O'BEIRNE) And this was also generated	

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22 (85 to 88)

	85		87
1 the day before the April 14th, 2017, conference		1 are not row numbers on this document for some reason.	
2 regarding dealing with customers in violation of certain		2 If you would flip about a quarter of the way through, it	
3 copyright rules; correct?		3 changes over from having four columns with no color to	
4 A. It would appear so.		4 having six columns in color.	
5 Q. If you turn to the second sheet, the last page		5 Do you see that?	
6 reveals the same number of customer account lines,		6 A. I do.	
7 9,014.		7 Q. All right. So that's the second sheet. And	
8 Do you see that?		8 that appears to be the same kind of quarter-to-quarter	
9 A. Yes.		9 information that we saw in the previous exhibit; right?	
10 Q. And this has several more columns -- or at		10 A. It appears to be, yes.	
11 least seems to have two sets of the columns we've looked		11 Q. And then, if you flip -- if you turn that	
12 at, Accounts, Days, and Weighted Infringement for the		12 about -- to about three-quarters of the way through the	
13 fourth quarter of 2016 and for the first quarter of		13 document, the third sheet is printed in landscape.	
14 2017.		14 Do you see that?	
15 Do you see that?		15 A. I do.	
16 A. Yes.		16 Q. And this reflects three different sets of	
17 Q. And it appears, in the second sheet, that		17 columns -- actually, excuse me. Strike that.	
18 Grande is tracking the infringement from 2016 into 2017		18 This third sheet has four sets of columns	
19 of 9,014 customers.		19 of account numbers with days and weighted infringement	
20 MR. HOWENSTINE: Objection. Calls for		20 scores.	
21 speculation.		21 Do you see that?	
22 A. It would appear so.		22 A. Yes.	
23 (Exhibit 59 marked.)		23 Q. Appearing to be -- the first quarter of 2017 is	
24 Q. (BY MR. O'BEIRNE) I'm handing you Plaintiffs'		24 the first one; right?	
25 Exhibit 59. You can put 58 aside for the time being.		25 A. Yes.	
	86		88
1 Turn to the last page. This is also a		1 Q. And then the second, third, and fourth columns	
2 document produced natively by Grande with a slip sheet		2 are the January, February, and March 2017 information?	
3 bearing Bates number GRANDE0000194; correct?		3 A. Yes.	
4 A. Yes.		4 Q. The row numbers didn't print for some reason.	
5 Q. I'll represent to you there were three sheets		5 I represent to you, for the record, that there are 5,331	
6 in this Excel, and they appear sequentially -- printed		6 rows on the first sheet, which, obviously, you're not in	
7 sequentially, as they did in Exhibit 58. Let's start		7 a position to confirm or not, but I just wanted to put	
8 with the first sheet.		8 that on the record.	
9 Do you see, at the bottom of the first page		9 You can put aside PX 59 for the time being.	
10 of the document, this appears to be the Grande DMCA		10 Turning back to PX 55, which is the outline	
11 Excessive Violations report from January 1st, 2017,		11 underneath Jerry Horne's email.	
12 through March 31st, 2017? Do you see that?		12 Do you see that?	
13 A. I do.		13 A. I do.	
14 Q. And this was also executed on April 13th, 2017.		14 Q. Under number 2, where it references excess	
15 A. Yes.		15 violations SSRS reports, it suggests comparing two	
16 Q. Which is the day before the meeting we've been		16 iterations of report data.	
17 discussing.		17 Do you see that?	
18 A. Uh-huh.		18 A. I do.	
19 Q. That's a "yes"? Sorry.		19 Q. And then A is (as read): Report covering	
20 A. It wasn't a question. Yes.		20 previous three-month period to confirm higher levels of	
21 Q. You would agree with me that this was executed		21 repeated offense.	
22 on April 13th, 2017, which is the day before the		22 Do you see that?	
23 April 14th meeting we've been discussing; correct?		23 A. I do.	
24 A. It would appear so, yes.		24 Q. Does it appear that the third SSR report we	
25 Q. If you would please turn to -- it appears there		25 just looked at had such a three-month comparison in the	

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35 (137 to 140)

	137		139
1 A. I do know that there are time periods where		1 Q. You mentioned that Grande's system will only	
2 Rightscorp did not comply, but I couldn't, off the top		2 continue to process through notices that meet the DMCA	
3 of my head, tell you what time periods those were.		3 policy requirements.	
4 Q. You're not aware that one of those time periods		4 What happens to them once that assessment's	
5 included June 2017?		5 been made?	
6 A. I'm not sure. I – I do not know. I would		6 A. For one that is valid or invalid?	
7 need to clarify. I would need to verify.		7 Q. Valid. I'm sorry. Let me ask again.	
8 Q. What's your best recollection as to when any		8 What is the process by which a notice that	
9 such time periods were?		9 has been deemed valid moves through the Rightscorp	
10 A. Going from memory, which may not be accurate,		10 system after being assigned a ticket number?	
11 with the implement- – implementation of this policy, I		11 A. The Grande system?	
12 believe that Rightscorp was not providing the		12 Q. What is the -- I apologize. Strike that.	
13 requirements to process at the time of implementation.		13 What is the process by which a notice	
14 What I am not a hundred percent sure of is whether there		14 received by Grande of copyright infringement moves	
15 was a time period that that changed or varied back and		15 through Grande's system after the system determines it	
16 forth, and I would need to confirm that.		16 meets the requirements of the DMCA policy?	
17 Q. When you say "this process," you mean the DMCA		17 A. At that point, the -- the notification to the	
18 policy implemented in February 2017?		18 customer is automated. So it would flow through the	
19 A. Yes.		19 system we described here. That would then go to a	
20 Q. In what ways do you recall that -- strike that.		20 system that correlates who the customer is and how to	
21 Sitting here today, what is your		21 notify that customer of the alleged infringement.	
22 understanding of what ways the Rightscorp notices		22 Q. And, in the early part of the implementation of	
23 provided at any time in 2017 failed to satisfy,		23 this policy, sometime after February 2017, that process	
24 allegedly, the DMCA requirements in your policy?		24 was by CSG, in paper letters still; right?	
25 A. My recollection is that the -- the digital		25 A. That's correct.	
	138		140
1 signature requirements were not met with Rightscorp		1 Q. And then, at some point, it became OSG sending	
2 specifically.		2 electronic notices?	
3 Q. What do you mean "the digital signature		3 A. Along with paper, if necessary.	
4 requirements"?		4 Q. Understood.	
5 A. The public key. And I'd have to review the		5 But, in both instances, it was automatic?	
6 policy to accurately state this.		6 A. Yes.	
7 Q. Please feel free to do so.		7 Q. So no Grande person is sitting there going	
8 You're looking at PX 53?		8 notice by notice and saying, "This one is good; send it	
9 A. Yes. Yes. I -- it's the notification		9 to the customer. This one is not good; don't send it"?	
10 requirement that Grande requires that each notification		10 A. That is correct.	
11 be in a PGP format or compatible standard and must be		11 Q. Provided a notice satisfies the requirements	
12 digitally signed to verify the identif- -- identity of		12 laid out in the DMCA policy, it's going to get	
13 the sender. I recall that that was the requirement that		13 forwarded?	
14 was not met specifically by Rightscorp.		14 A. Generally speaking, that is correct. I'm not	
15 Q. When was that requirement instituted?		15 aware of any other situation.	
16 A. With this policy.		16 Q. Understood.	
17 Q. February 2017?		17 Prior to the implementation of the current	
18 A. At least, yes.		18 DMCA policy in February 2017, Grande was sending paper	
19 Q. So it was not a requirement under the previous		19 notices of infringement but was not terminating	
20 acceptable use policy?		20 subscribers for copyright infringement; correct?	
21 A. I do not recall whether it was in there or not,		21 MR. HOWENSTINE: Objection. Vague.	
22 to be honest.		22 A. To answer that more accurately, I'd need the	
23 Q. That policy speaks for itself, though.		23 time frame defined there.	
24 Whatever was in there, was in there?		24 Q. (BY MR. O'BEIRNE) Sure.	
25 A. That's a true statement.		25 So let's start in 2016. In 2016, Grande	

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36 (141 to 144)

<p>1 was still operating under the old system of CSG, sending 2 out paper letters in response to notices of copyright 3 infringement that Grande received; correct?</p> <p>4 A. That is correct.</p> <p>5 Q. And Grande was not terminating subscribers for 6 copyright infringement in 2016?</p> <p>7 A. To my knowledge, that is correct.</p> <p>8 Q. Grande was not terminating subscribers for 9 copyright infringement in 2015?</p> <p>10 A. To my knowledge, that is correct.</p> <p>11 Q. Grande was not terminating subscribers for 12 copyright infringement in 2014?</p> <p>13 A. To my knowledge, that is correct.</p> <p>14 Q. Grande was not terminating subscribers for 15 copyright infringement in 2013?</p> <p>16 A. To my knowledge, that is correct.</p> <p>17 Q. Grande was not terminating subscribers for 18 copyright infringement in 2012?</p> <p>19 A. To my knowledge, that is correct.</p> <p>20 Q. Grande was not terminating subscribers for 21 copyright infringement in 2011?</p> <p>22 A. This is where I need to clarify that 23 somewhere -- and I don't have an exact date nor point of 24 reference to point to -- in 2010 or 2011, which I 25 believe was 2010, when we were previously managed by</p>	<p>141</p> <p>1 to whether the practice of terminating subscribers was 2 ongoing or not?</p> <p>3 A. I am generally aware that we were shutting down 4 subscribers based on copyright violations, yes.</p> <p>5 Q. Prior to 2011?</p> <p>6 A. Yes.</p> <p>7 Q. And then, after a change in policy in 2011, 8 that practice ceased?</p> <p>9 A. To the best of my knowledge, yes.</p> <p>10 MR. O'BEIRNE: Please bear with me a 11 second. I got lost in my documents. We've been going 12 about an hour five. Would now be a good time for a 13 comfort break?</p> <p>14 MR. HOWENSTINE: Yes.</p> <p>15 MR. O'BEIRNE: Great.</p> <p>16 THE VIDEOGRAPHER: Time is 2:19 p.m. We're 17 going off the record.</p> <p>18 (A recess was taken from 2:19 p.m. 19 to 2:36 p.m.)</p> <p>20 THE VIDEOGRAPHER: Time is 2:36 p.m. We're 21 back on the record.</p> <p>22 Q. (BY MR. O'BEIRNE) Mr. Horton, you understand 23 you're still under oath?</p> <p>24 A. Yes.</p> <p>25 Q. Did you discuss your testimony with anybody at</p>
<p>142</p> <p>1 ABB, we had a policy in place of turning off all 2 subscribers upon copyright violation notice, requiring 3 the customer to then contact Grande to discuss the 4 issue, understand what happened, inform the customer of 5 why they'd been shut off, and take appropriate action 6 from there. In 2010 or '11, in that time period, ABB 7 implemented a change to that policy.</p> <p>8 Q. After the change in policy that you recall was 9 sometime in 2010 or 2011, Grande was not terminating 10 subscribers for copyright infringement until the current 11 DMCA policy in 2017?</p> <p>12 A. To the best of my knowledge, that's true.</p> <p>13 Q. Prior to the change in policy that you recall 14 occurred in 2010 or 2011, ABB was at least suspending 15 customers for copyright infringement?</p> <p>16 A. To be more accurate, Grande had always done 17 that up until that point. So Grande existed before ABB. 18 After ABB came in, a change was made to that policy.</p> <p>19 Q. I see.</p> <p>20 So Grande did terminate subscribers for 21 copyright infringement prior to 2011?</p> <p>22 A. Yes. And it – it's hard for me to describe 23 exactly that process because that was a long time ago, 24 and I – I was not involved in it directly at the time.</p> <p>25 Q. I understand. But you are generally aware as</p>	<p>144</p> <p>1 the break?</p> <p>2 A. No.</p> <p>3 Q. Okay. Let's proceed with some more questions.</p> <p>4 We were talking about Grande's historic treatment of 5 allegations of copyright infringement. And I recall you 6 talking about a change in policy that you estimated 7 occurred between 2010 and 2011, sometime in that time 8 frame.</p> <p>9 That's fair?</p> <p>10 A. That's correct.</p> <p>11 Q. And when did ABB take over management 12 responsibilities for Grande?</p> <p>13 A. Late 2009. I want to say September of 2009.</p> <p>14 Q. So there was a period during which ABB was 15 performing management services for Grande in which 16 Grande continued to suspend all subscribers for which 17 Grande received a notice of copyright infringement?</p> <p>18 A. That is correct, to the best of my knowledge.</p> <p>19 Q. And, at some point in time after ABB took 20 over, there was a policy change, and the practice of 21 suspending or terminating subscribers who were repeat 22 infringers ceased?</p> <p>23 A. That is my understanding, yes.</p> <p>24 Q. And for the entire time we're discussing, late 25 2009, 2010, 2011 and forward, you were in your current</p>

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37 (145 to 148)

	145		147
1 role as VP?		1 A. Yes.	
2 A. Yes.		2 Q. And that's also what you were describing.	
3 (Exhibit 63 marked.)		3 Prior to the change in policy, notices of infringement	
4 Q. (BY MR. O'BEIRNE) I'm handing you Plaintiffs'		4 would go into a TSC queue for Grande to contact the	
5 Exhibit 63. This is an email produced by Grande. There		5 customer regarding the copyright infringement.	
6 is a Bates number in the bottom right-hand			
7 corner; right?			
8 A. Yes.		6 A. More specifically, the customer would contact	
9 Q. This email, Exhibit 63, is an email from		7 us as to why their service was shut down. And that	
10 Colin Bloch to you, dated October 25th, 2010; right?		8 ticket would be the representing information that the	
11 A. It is.		9 TSC would then understand why the customer's service was	
12 Q. The title of the email is "Systems Report,		10 shut down.	
13 10/25/2010."		11 Q. Right. So Grande was shutting down the service	
14 Correct?		12 and then, when the customer called to inquire as to why	
15 A. Yes.		13 the service had been shut down, Grande would inform them	
16 Q. Did Mr. Bloch routinely send you systems report		14 about the copyright infringement information reflected	
17 emails summarizing work that had occurred at or near the		15 in the TSC queue?	
18 time of the -- of the email regarding different systems		16 A. Correct.	
19 projects?		17 Q. You were aware that this was the process in	
20 A. Yes. Generally as, like, a weekly report.		18 place in October 2010?	
21 Q. So this is a Monday one. Do you understand		19 MR. HOWENSTINE: Objection. Vague.	
22 that was -- would have been describing what happened the		20 Q. (BY MR. O'BEIRNE) You can answer.	
23 week before or in the coming week or just in general		21 A. The process that changed? Is that what you're	
24 around a week's time frame?		22 saying?	
25 A. In general, around that week's time frame.		23 Q. Sorry. I'll -- I'll -- I'll ask it again.	
	146	24 What Mr. Bloch is describing as the	
1 Q. Okay. The first bullet -- or I should --		25 completed changes to the abuse management system were	
2 strike that.			
3 The email in Plaintiffs' Exhibit 63			
4 includes a numbered list of items.			
5 Do you see that?			
6 A. Yes.			
7 Q. The first item, number 1, Mr. Bloch informs you			
8 (as read): Completed changes to the abuse management			
9 system to allow DMCA notices for residential customers			
10 to be placed in a queue, which will be processed by CSG			
11 for the purposes of sending out a letter.			
12 Do you see that?			
13 A. Yes.			
14 Q. In October 2010, would this have been under the			
15 new policy of not terminating or suspending repeat			
16 infringers but sending out a paper letter from CSG?			
17 A. Yes.			
18 Q. It goes on (as read): Provided a script that			
19 the CSG team can use to pull the data automatically.			
20 Do you see that?			
21 A. Yes.			
22 Q. (As read): We have now stopped placing tickets			
23 in the TSC queue and all future DMCA notices will go out			
24 as letters from CSG.			
25 That's what it says; right?			
	148		
1 complete by October 25th, 2010; right?			
2 A. To the best of my knowledge, reading this, yes,			
3 I agree.			
4 Q. And does that refresh your recollection as to			
5 the time period in which the policy changed from			
6 terminating repeat infringers to not terminating repeat			
7 infringers?			
8 A. Yes. And so when I said earlier 2010, 2011,			
9 this looks like a refined date.			
10 Q. So you think it's fair to say it's about this			
11 time period, late 2010, when the policy changed from			
12 terminating repeat infringers to not terminating repeat			
13 infringers?			
14 A. Yes, it would appear so.			
15 To clarify that statement, we were -- we			
16 were disconnecting all offenders, not just repeat			
17 offenders.			
18 (Exhibit 64 marked.)			
19 Q. (BY MR. O'BEIRNE) I'm handing you Plaintiffs'			
20 Exhibit 64. This is an email from Waylon Endsley to			
21 you, dated February 14th, 2017; right?			
22 A. Yes.			
23 Q. Who is Mr. Endsley?			
24 A. Waylon works as part of the billing team as a			
25 database administrator.			

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72 (285 to 288)

	285		287
1	A. That appears to be his opinion in this email,	1	network?
2	yes.	2	Do you see that?
3	Q. All right. Have you discussed this opinion	3	A. I do.
4	with Mr. Creel?	4	Q. Now, the date on this is Monday, October 10th,
5	A. I have not.	5	2016; right?
6	Q. Are you aware of any decision Grande made to	6	A. Uh-huh.
7	ignore notices from the company referenced here?	7	Q. At that --
8	A. I am not.	8	A. Yes.
9	Q. Would you agree that it would be improper for	9	Q. Sorry. Let's just get that, again, clean.
10	10 Grande to refuse to accept notices from a particular	10	The -- the date on Arthur's question in
11	11 source if they otherwise comply with the DMCA policy	11	11 PX 89 is October 10th, 2016; right?
12	12 requirements?	12	A. Yes.
13	13 MR. HOWENSTINE: Objection. Calls for a	13	Q. And he's asking, on October 10th, 2016, how
14	14 legal conclusion.	14	many notices does a customer get before they're removed
15	A. Assuming they comply and there was nothing	15	15 from the Grande network; right?
16	unique that made people feel the need to get a legal	16	A. Yes.
17	team to review, yes, we would process them.	17	Q. Now, the answer to that question on
18	(Exhibit 89 marked.)	18	18 October 10th, 2016, is an unlimited amount of
19	Q. (BY MR. O'BEIRNE) I'm handing you Plaintiffs'	19	19 notices; right?
20	20 Exhibit 89.	20	A. Technically, yes.
21	21 MR. HOWENSTINE: How are we doing on time	21	Q. Not just technically. Actually; right?
22	22 here?	22	A. Yes.
23	23 THE VIDEOGRAPHER: Got one hour left.	23	Q. In every respect, the answer to that question
24	24 Q. (BY MR. O'BEIRNE) Plaintiffs' Exhibit 89 is a	24	24 is yes?
25	25 document produced by Grande in this case; right?	25	MR. HOWENSTINE: Objection. Asked and
	286		288
1	A. Yes.	1	answered.
2	Q. It's an email from Mr. Fogle to you, on	2	Q. (BY MR. O'BEIRNE) No?
3	3 October 10th, 2016; right?	3	A. Yes.
4	A. Yes.	4	Q. Okay. So you would agree with me, in
5	5 Q. And the earlier email in the chain is from	5	5 October 2016, there was no limit to the number of
6	6 Arthur DeLeon @mygrande.com.	6	6 notices a Grande subscriber could receive --
7	7 Do you see that?	7	A. Yes.
8	A. I do.	8	Q. -- before getting removed; right?
9	9 Q. Who is Arthur?	9	A. Yes. Yes.
10	A. I'm going to assume he works in the call	10	Q. Because Grande wasn't removing anybody?
11	center, but I do not know.	11	A. Yes.
12	12 Q. The To address that he sent this email to is	12	Q. Similarly, there was no limit to the number of
13	13 @internetsystems or abbreviated ISYS@mygrande.com.	13	13 notices a Grande subscriber could receive in
14	14 Do you see that?	14	14 2015; right?
15	A. Yes.	15	A. Yes.
16	16 Q. Who does that group email address go to?	16	Q. Same for 2014?
17	A. I believe that goes to Colin, Sam, Lars, and	17	MR. HOWENSTINE: Objection. Asked and
18	Rich.	18	answered.
19	19 Q. And that's how Rich would have gotten it to	19	A. Yes. As we've covered earlier, yes.
20	20 forward it to you?	20	Q. (BY MR. O'BEIRNE) So, if Grande received
21	A. Yes.	21	25,000 notices regarding a particular subscriber, they
22	22 Q. And Arthur's question is (as read): Good	22	22 would not have been kicked off in October 2016?
23	23 morning. I had a simple question about the DMCA abuse	23	MR. HOWENSTINE: Same objection.
24	24 notices that go out to customers. How many notices does	24	A. Answer's still yes.
25	25 a customer get before they are removed from Grande's	25	Q. (BY MR. O'BEIRNE) Mr. Fogle forwards this

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73 (289 to 292)

289	291
<p>1 question to you without further comment, just sends you 2 the email. You see that; right?</p> <p>3 A. Yes.</p> <p>4 Q. What was your response to him?</p> <p>5 A. I do not recall.</p> <p>6 (Exhibit 90 marked.)</p> <p>7 Q. (BY MR. O'BEIRNE) I'm showing you Plaintiffs' 8 Exhibit 90. This is an email produced by Grande in this 9 case; right?</p> <p>10 A. Yes.</p> <p>11 Q. It's GRANDE0000001?</p> <p>12 A. Yes.</p> <p>13 Q. This is an email Mr. Fogle sent to 14 Roberto Chang and Robert Creel in April 2013; right?</p> <p>15 A. Yes.</p> <p>16 Q. He cc's Lars Christianson and Jimmy 17 Quigley; right?</p> <p>18 A. Yep. Yes.</p> <p>19 Q. And it's titled "DMCA Notices"; right?</p> <p>20 A. Yes.</p> <p>21 Q. He says (as read): Roberto, Robby, we 22 currently send out DMCA notifications through mail for 23 what we take in with our abuse system.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	<p>1 That's what he tells Roberto and 2 Robert; right?</p> <p>3 A. Yes. Sorry.</p> <p>4 Q. (As read): I don't know if I'm seeing a broken 5 process or compliance with the letter of the law. Do 6 you guys have insight or knowledge on this?</p> <p>7 That's what his email asks; right?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall having discussions with 10 Mr. Fogle, April 2013, about users racking up DMCA 11 takedown requests and no process for remedy in place?</p> <p>12 A. I do not recall, no.</p> <p>13 Q. Do you recall having conversations with 14 Mr. Chang about that in 2013?</p> <p>15 A. I do not.</p> <p>16 Q. Mr. Creel?</p> <p>17 A. I do not.</p> <p>18 Q. Mr. Fogle forwarded you, in 2016, the question 19 from the call center as to how many notices one could 20 receive before getting terminated; right?</p> <p>21 A. Yes.</p> <p>22 Q. So this is a question that Mr. Fogle was 23 raising internally at Grande as far back as 24 2013; correct?</p> <p>25 A. Yes, he was.</p>
290	292
<p>1 Q. He goes on to say (as read): However, there 2 are no limits here. We have some customers that are up 3 to their 54th notice.</p> <p>4 He says that; right?</p> <p>5 A. Yes.</p> <p>6 Q. That's consistent with what Grande's policy 7 was, at the time, of not terminating anybody; right?</p> <p>8 A. Yes.</p> <p>9 Q. (As read): Understand that the DMCA law 10 requires us to expeditiously notify customers, and we 11 can't have knowledge of the content being shared, but 12 there is no three strikes law or anything that we 13 follow, like some ISPs.</p> <p>14 That's what he says; right?</p> <p>15 A. Yes.</p> <p>16 Q. (As read): Also, we don't have any verbiage 17 other than "may terminate the service at any time" in 18 our residential AUP policy.</p> <p>19 Right? That's what he says?</p> <p>20 A. That's what he said.</p> <p>21 Q. And AUP means acceptable use policy?</p> <p>22 A. Yes.</p> <p>23 Q. He says (as read): Question: We have users 24 who are racking up DMCA takedown requests and no process 25 for remedy in place.</p>	<p>1 (Exhibit 91 marked.)</p> <p>2 Q. (BY MR. O'BEIRNE) I'm handing you Plaintiffs' 3 Exhibit 91. This is an email produced by Grande in this 4 case; correct?</p> <p>5 A. Yes.</p> <p>6 Q. It's Bates number GRANDE0000009; right?</p> <p>7 A. Yes.</p> <p>8 Q. If you turn to the second page of Exhibit 91, 9 at the bottom, you'll see that the original email in 10 this chain is Mr. Fogle's email of April 11th, 11 2013; right?</p> <p>12 A. Yes.</p> <p>13 Q. Turning back to the first page, the middle 14 email of April 11th, from Mr. Chang, at 5:27 p.m., do 15 you see that?</p> <p>16 A. On the first page?</p> <p>17 Q. On the first page.</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Chang says (as read): Richard, who is 20 responsible for the DMCA notification process? Do we 21 call customers, question mark.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. He concludes his email (as read): If we do 25 nothing more than emails, as I think you mentioned, we</p>

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74 (293 to 296)

	293	295
1 might lose our safe harbor status.		1 notification.
2 Do you see that?		2 Q. Are there any other responsibilities you're
3 A. I do.		3 aware of that you have as Grande's DMCA agent?
4 Q. What safe harbor do you understand him to be		4 A. Directly, no.
5 talking about?		5 Q. And just going back to your answer. So having
6 MR. HOWENSTINE: Objection. Calls for		6 your name on a piece of paper is sort of not a
7 speculation.		7 responsibility. That's -- that's just a fact. But are
8 A. I'm assuming he means the copyright safe harbor		8 there any responsibilities that you have that flow from
9 for Internet providers.		9 the fact that your name is on the DMCA policy?
10 Q. (BY MR. O'BEIRNE) The DMCA safe harbor?		10 A. Not directly, no.
11 A. Yes.		11 Q. In what respect, then, if not directly?
12 Q. Mr. Fogle responds (as read): We aren't doing		12 A. I would sim- -- just simply say that, you know,
13 this today, from what I can gather.		13 my responsibility is to ensure that the systems we have
14 Do you see that?		14 are running and are operated. Policy procedure is not
15 A. I do.		15 my responsibility.
16 Q. And, again, as we've covered, Grande was not		16 Q. I -- okay. I'm not sure I understand that.
17 terminating anybody for copyright infringement in		17 So are you testifying that, to the extent
18 2013; right?		18 that Grande has a DMCA procedure, it's your
19 A. That is correct.		19 responsibility, as the agent, to ensure that it's
20 Q. (As read): ISYS owns the DMCA abuse process.		20 running?
21 They provide what automation we have today. Snail mail		21 MR. HOWENSTINE: Objection. Misstates the
22 warnings are automatically sent out by CSG from an		22 testimony.
23 upload process.		23 A. Please restate that.
24 That's what he explains; right?		24 Q. (BY MR. O'BEIRNE) Yeah, sure. I'm just trying
25 A. Yes.		25 to understand what your -- what your testimony is.
	294	296
1 Q. Are you aware of any other conversations		1 A. Sure.
2 between Mr. Fogle and Mr. Chang regarding loss of the		2 Q. So you mentioned your name is on the policy.
3 DMCA safe harbor in 2013?		3 We established that.
4 A. I am not.		4 A. Yes.
5 Q. Did you have discussions with anybody at Grande		5 Q. I'm asking: What's your understanding of your
6 about Grande's losing any purported protection from the		6 responsibilities for anything that flow from the fact
7 DMCA safe harbor in 2013?		7 that your name is on the policy?
8 A. Not that I recall.		8 A. From the fact that my name's on the policy, I
9 MR. O'BEIRNE: Let's take a quick break.		9 don't feel like anything is directly related to that
10 THE VIDEOGRAPHER: The time is 6:27 p.m.		10 internally to Grande. I am a point of contact as an
11 We're going off the record.		11 agent; thus I have to be responsive to anything that
12 (A recess was taken from 6:27 p.m.		12 comes to me from that channel.
13 to 6:36 p.m.)		13 From a Grande employee perspective, I have
14 THE VIDEOGRAPHER: The time is 6:36 p.m.		14 had the responsibility to ensure the system we have in
15 We're back on the record.		15 place is running and is operational.
16 Q. (BY MR. O'BEIRNE) Mr. Horton, you understand		16 Q. When you say "Grande employee perspective," you
17 you're still under oath?		17 mean what your employment responsibilities were prior to
18 A. Yes.		18 becoming the DMCA agent?
19 Q. Did you discuss your testimony with anybody at		19 A. Generally speaking, as an operating engineer at
20 the break?		20 Grande, one of my responsibilities is to make sure our
21 A. No.		21 systems function. One of those systems is the abuse
22 Q. What are your roles and responsibilities as		22 system.
23 Grande's DMCA agent?		23 Q. Let me ask it a different way. There was a
24 A. I'm listed as the contact for third parties to		24 point in time in which you became the DMCA agent; right?
25 reach out to Grande in terms of DMCA and copyright		25 A. Yes.

Transcript of Lamar Horton
Conducted on February 21, 2018

76 (301 to 304)

<p>1 A. I do not recall seeing a report like this.</p> <p>2 Q. Are you aware of Grande's ability to run such a</p> <p>3 report?</p> <p>4 A. Well, it's a logical assumption that if Grande</p> <p>5 provided this that we generated the report.</p> <p>6 Q. I understand that. I'm not asking you to</p> <p>7 assume anything. I'm -- I'm asking you something a</p> <p>8 little different.</p> <p>9 I'm saying: What is your understanding of</p> <p>10 Grande's ability to generate a report like this?</p> <p>11 A. I think we've seen other examples today of</p> <p>12 being able to query the database and provide reports of</p> <p>13 this information.</p> <p>14 Q. So is your testimony that whatever knowledge</p> <p>15 you have about reports like this has been gleaned</p> <p>16 sitting here with me, looking at exhibits I've been</p> <p>17 showing you?</p> <p>18 A. I would not quantify it that way.</p> <p>19 Q. All right. So what -- what understanding do</p> <p>20 you have, sitting here today, about Grande's ability to</p> <p>21 generate this report?</p> <p>22 A. As I stated, we have the ability to generate</p> <p>23 these reports. We've seen examples of them today.</p> <p>24 Q. Who generates them?</p> <p>25 A. I don't know why these reports are generated.</p>	<p>301</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER</p> <p>2 I, CANDICE ANDINO, the officer before whom the</p> <p>3 foregoing deposition was taken, do hereby certify that</p> <p>4 the foregoing transcript is a true and correct record of</p> <p>5 the testimony given; that said testimony was taken by me</p> <p>6 stenographically and thereafter reduced to typewriting</p> <p>7 under my direction; that reading and signing was not</p> <p>8 requested; and that I am neither counsel for, related</p> <p>9 to, nor employed by any of the parties to this case and</p> <p>10 have no interest, financial or otherwise, in its</p> <p>11 outcome.</p> <p>12 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>13 this 5th day of March, 2018.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 Q. Do you see that, Plaintiffs' Exhibit 92, there</p> <p>2 is an Entity column on the right-hand side?</p> <p>3 A. I do.</p> <p>4 Q. And Exhibit 92 lists, as specific account DMCA</p> <p>5 violations, numerous ticket numbers with the source</p> <p>6 entity as Rightscorp Inc.</p> <p>7 A. I do.</p> <p>8 Q. Please bear with me for a second.</p> <p>9 MR. O'BEIRNE: That's all the questions I</p> <p>10 have for Mr. Horton at this time. I pass the witness.</p> <p>11 MR. HOWENSTINE: I have no questions of the</p> <p>12 witness.</p> <p>13 THE VIDEOGRAPHER: The time is 6:47 p.m.,</p> <p>14 on February 21st, 2018. This completes the video</p> <p>15 deposition of Lamar Horton.</p> <p>16 THE REPORTER: Would you like to order a</p> <p>17 copy of the transcript?</p> <p>18 MR. HOWENSTINE: Yes, I would.</p> <p>19 (Deposition concluded at 6:47 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>302</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>